

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

CARD ACTIVATION TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 07-cv-6289
v.)	
)	Judge Ronald A. Guzman
THE TJX COMPANIES, INC.)	
)	Magistrate Judge Jeffrey Cole
Defendant.)	
)	
)	

ANSWER TO AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

NOW COMES Plaintiff, Card Activation Technologies, Inc. (“CAT”), through its attorneys, ORUM & ROTH, LLC, and for its Answer to Affirmative Defenses and Counterclaims states as follows:

First Affirmative Defense

8. The ‘859 patent is invalid for failure to comply with 35 U.S.C. §§ 102, 103, and/or 112.

Answer: Denies.

Second Affirmative Defense

9. TJX is not infringing and has not infringed the ‘859 patent, either directly, by contribution, or by inducement.

Answer: Denies.

Third Affirmative Defense

10. CAT's claims are barred, in whole or in part, by reason of the doctrine of laches.

Answer: Denies.

Fourth Affirmative Defense

11. By virtue of statements made, amendments made, or positions taken during the prosecution of the applications for the '859 patent, CAT is estopped from asserting that the '859 patent covers or includes any accused TJX product or method.

Answer: Denies.

Fifth Affirmative Defense

12. CAT's claim for damages for alleged infringement is limited by the provisions of 35 U.S.C. § 287.

Answer: Denies.

TJX's Counterclaims

13. Pursuant to Fed. R. Civ. P. 13, Defendant TJX, for its counterclaims against CAT, alleges as follows:

Answer: Paragraph 13 does not contain any factual or other allegations, nevertheless Plaintiff denies.

Parties

14. TJX is a corporation organized and existing under the laws of the state of Delaware with its principal place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

Answer: Admits.

15. Upon information and belief, CAT is a Delaware corporation with its principal place of business at 33 West Jackson Blvd., Suite 1618, Chicago, Illinois 60604-3749.

Answer: Admits.

Jurisdiction and Venue

16. This action arises under the patent laws of the United States, 35 U.S.C. § 100, *et seq.*, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, based on an actual justiciable controversy between TJX and CAT. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a) and 2201.

Answer: Admits.

17. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).

Answer: Admits.

First Counterclaim

18. TJX repeats, reiterates and realleges each and every allegation in paragraphs 14 through 17 of its Answer to CAT's Complaint and Counterclaims.

Answer: Plaintiff realleges its answers to paragraphs 14 through 17 as if fully set forth herein.

19. There is an actual case or controversy between TJX and CAT concerning the alleged infringement of the '859 patent by virtue of the allegations of the Complaint and TJX's Answer to CAT's Complaint and Counterclaims in this action.

Answer: Admits.

20. Each claim of the '859 patent is invalid for failure to meet one or more of the provisions governing patentability specified in 35 U.S.C. §§ 102, 103, and/or 112.

Answer: Denies.

21. TJX requests a judgment declaring that the '859 patent are invalid.

Answer: Plaintiff denies the patent is invalid.

22. CAT's conduct renders this an exceptional case within the provisions of 35 U.S.C. § 285, entitling TJX to an award of costs, expenses and reasonable attorneys' fees.

Answer: Denies.

Second Counterclaim

23. TJX repeats, reiterates and realleges each and every allegation in paragraphs 14 through 22 of its Answer to CAT's Complaint and Counterclaims.

Answer: Plaintiff restates its answers to paragraphs 14 through 22, as if fully set forth herein.

24. There is an actual case or controversy between TJX and CAT concerning the alleged infringement of the '859 patent by virtue of the allegations of the Complaint and TJX's Answer to CAT's Complaint and Counterclaims in this action.

Answer: Admits.

25. TJX has not and does not infringe, contribute to the infringement of, or actively induce others to infringe the '859 patent.

Answer: Denies.

26. TJX requests a judgment declaring that TJX does not infringe the '859 patent.

Answer: Plaintiff denies TJX is entitled to a judgment in its favor.

27. CAT's conduct renders this an exceptional case within the provisions of 35 U.S.C. § 285, entitling TJX to an award of costs, expenses and reasonable attorneys' fees.

Answer: Denies.

WHEREFORE, Card Activation Technologies, Inc. requests that this Court dismiss TJX's Counterclaims and enter judgment in favor of Plaintiff.

Respectfully submitted,

CARD ACTIVATION TECHNOLOGIES, INC.

By: /s/ Mark D. Roth

Keith H. Orum

Mark D. Roth

ORUM & ROTH, LLC

53 West Jackson Blvd.

Suite 1616

Chicago, IL 60604

Telephone: (312) 922-6262

*Attorneys for Plaintiff Card Activation
Technologies, Inc.*